

§ 19.45

5100.38A and special conditions in grant awards.

(2) Section 511(a)(16) of the Airport and Airway Improvement Act of 1982, 49 U.S.C. app. 2210, requires FAA recipients and subrecipients to extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and to award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the 1949 Federal Property and Administrative Services Act, or equivalent airport sponsor qualifications based requirements. Non-regulatory guidance for FAA programs is contained in FAA Order 5100.38A and special conditions in grant awards.

(3) Section 3(a)(2)(C) of the Federal Transit Act, as amended, (49 U.S.C. app. 1602(a)(2)(C)) prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications. Nonregulatory guidance is contained in FTA Circular 4220.1B, Third Party Contracting Guidelines, Chapter I, section 15 and Attachment A.

(4) Section 1241(b)(1) of 46 U.S.C. and 46 CFR part 381, Cargo Preference—U.S. Flag Vessels impose cargo preference requirements on the shipment of foreign made goods for FTA recipients. Nonregulatory guidance is contained in FTA Circular 4220.1B, Third Party Contracting Guidelines, Chapter I, section 10.

§ 19.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 19.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

- (a) Basis for contractor selection,
- (b) Justification for lack of competition when competitive bids or offers are not obtained, and
- (c) Basis for award cost or price.

§ 19.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

§ 19.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the